Supreme Court, U.S.
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No. 00-1330

In The
Supreme Court of the United States

Bruce A. Friedemann, *Petitioner*

v.

Terri McCormick, Guadalupe Gutierrez, Joan Gilbert, Lucy Brajevich, Kathleen Assar, Michael Engs, Joe Torro, Margret Sprague, J. Grahm Smart, Pima Community College District Board of Governors, *Respondents.*

On Petition for a Writ of Certiorari to the 9th Circuit Court of Appeals

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REPLY TO BRIEF IN OPPOSITION

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5 pp

CORRECTIONS & CLARIFICATIONS

Pages 3-6 of Pima's "Opposition" consists of statements made by Friedemann at a hostile deposition attended by Defendants McCormick, the teacher who flunked Friedemann and Smart, the President to Pima College.

On Page 11 McCormick alleges that she spent "approximately one hour after class with Mr. Friedemann discussing his unsatisfactory PR." She actually spent less than 10 minutes discussing the PR with Friedemann. Also on Page 11, the word left blank is "Hell."

On Pages 3 and 19-21, Pima brings up an Americans with Disabilities Act (ADA) claim that Friedemann did not raise in the 9th Circuit Court and is not an issue herein.

THE QUESTION PRESENTED BY PIMA IS INCOMPLETE

The Question presented by Pima (Page 1) omits significant issues. Pima's Question, property phrased should read:

Did the Trial Court err by not allowing a jury to determine if Pima's decision to academically fail Petitioner was:

1. arbitrary and capricious;
2. motivated by bad faith and ill will;
3. unrelated to academic performance;
4. irrational (no rational basis);
5. a substantial departure from accepted academic norms;
6. because the persons or committee responsible for the flunking did not actually exercise professional judgment (teacher/staff incompetence)?

THE CASES CITED BY PIMA ARE DISSIMILAR

In Pima's "Reasons for Denying the Writ" (Page 12), Pima cites several cases that are dissimilar. Two and a half pages (pp. 13-15) are devoted to *Clements v. County of Nassau,* 835 F.2d 1000 (2nd Cir. 1987) and one page (15-16) is devoted to *Van de Zilver v. Rutgers University,* 971 F.Supp. 925 (D.N.J 1997).

Clements *continuously* exhibited unsafe, unclean, non-antiseptic techniques that caused a physical danger to her patients! She never contested that her techniques were unsafe, she contested the necessity of having to repeat the course and that it was unfair to fail her within the first two days of her clinical rotation. Clements was also given more opportunities to pass than Friedemann was. (The academic norm is to allow students more than two chances to receive a passing grade.) Clements failed empirical tests and was told to "use common sense." The test (PR) Friedemann failed was subjective and vague. Friedemann has a massive amount of proof that his test (PR) was "satisfactory" (see below) and Friedemann continuously and vigorously challenged the teachers and staff's irrational, inadequate and unprofessional evaluation of the PR.

Van de Zilver "had fallen far short of the academic criterion stated in the Handbook." He failed to achieve an "honors" or "high pass" in any of his courses taken at the medical school and he received a large number of "C's" in his Rutgers courses. "His grades were consistently poor throughout his four semesters in the Joint Program and were not a temporary aberration." He failed to participate in programs or take opportunities to improve his grades. Friedemann was an "A" student.

In the other cases cited by Pima: Gupta, Tobias, Morin and Johnson exhibited similar unsafe practices, poor grades and incomplete work.

In all the published cases related to Friedemann's, none of them are similar and all of them are negative: academically poor students were denied their "day in Court" — none of the published cases are positive: granting an academically gifted student his "day in Court."

THERE IS A MASSIVE AMOUNT OF COMPETENT, FACTUAL EVIDENCE FOR A JURY TO EVALUATE

Pima alleges that Friedemann did not present any competent, factual evidence (p. 17).

Friedemann's PR is *prima facie* evidence that there was no academic reason for flunking. A jury can:

1. Compare Friedemann's PR to the sample PR's in the school syllabi (the academic norms) and see that Friedemann's PR is *far* better.
2. See that Defendant McCormick offered no legitimate criticism of the PR. (The teacher critiques and grades the PR's by making comments and the grade directly on the PR.)
3. Compare Friedemann's PR to the professional report written by a nurse in a peer-reviewed journal and see that Friedemann's PR and the nurse's report are almost exactly the same. (The nurse's report appeared *after* Friedemann wrote his and was included at D92-TCYOAB.)
4. Compare the science in Friedemann's PR to the massive amount of corroborating evidence in "The Cure Yourself of Asthma Book" [D92-TCYOAB].

Further, irrefuted evidence (from Friedemann's Petition) proves Pima's decision to flunk Friedemann was arbitrary and capricious; motivated by bad faith and ill will; unrelated to academic performance; irrational; a substantial departure from accepted academic norms; because the teachers and staff were incompetent:

1. Friedemann is the only student *in ten years* who flunked NRS 101 because of an "unsatisfactory" PR.
2. Defendants McCormick, Gilbert and Gutierrez thought Friedemann was mentally ill.
3. McCormick and Gilbert were afraid of Friedemann.
4. Students hated Friedemann.
5. On three separate occasions, Defendants Assar, Gilbert and McCormick called the cops of Friedemann but they did not "press charges" or initiate disciplinary proceedings.
6. Friedemann disliked Defendants McCormick, Gutierrez, Gilbert and Brajevich *and they knew he disliked them.*
7. If not for the PR, Friedemann would have received a B for NRS 101.
8. The subjectively graded PR allows for arbitrary and capricious flunking of students the faculty dislikes.

CONCLUSION

There is a massive amount of evidence for a jury to find there was no academic reason for flunking Friedemann. Therefore, Friedemann petitions this Court to grant Certiorari.

Respectfully submitted,

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